SUPREME COURT, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI AND SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.,

Appellants,

BENJAMIN E. SMITH AND BRUCE WALTZER,

Appellants-Intervenors,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

ORIGINAL BRIEF FOR APPELLEES, JAMES H. PFISTER, RUSSELL R. WILLIE, JACK P. F. GREMILLION, AND COLONEL THOMAS D. BURBANK.

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ARGUMENT.

Point I.

THE LOUISIANA LEGISLATION ATTACKED HEREIN DOES NOT VIOLATE ON ITS FACE THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

(a) Appellants' Attack on Three Separate Statutes with Severable Provisions Should be Limited to Those Sections Under Which Prosecution Has Been Threatened by Enforcement Officials.

As will be shown by appellees' arguments under Points III and IV of this brief, it is the position of appellees that the constitutionality of none of the provisions attacked herein is properly before this Court. However, in the alternative, and assuming *arguendo* that a constitutional attack is properly before the Court, appellees make the following argument in answer to appellants' contentions.

Inasmuch as the legislation attacked herein is not one inseverable statutory scheme, but consists of numerous provisions, which are severable one from the other, a threshold inquiry must be made as to what sections are before this Court if constitutionality is to be considered.

Point I of appellants' brief refers to "the Louisiana Statute" as violating on its face the First and Fourteenth Amendments of the U. S. Constitution. The legislation under attack herein is not one statute, but three separate statutes. R.S. 14:358-374 (the Subversive Activities and Communist Control Law) was enacted as Louisiana Act 270 of 1962. R.S. 14:385-388 was enacted as Louisiana Act 260 of 1958. R.S. 14:390-390.8 (the Communist Propaganda Control Law) was enacted as Louisiana Act 245

of 1962. All of these Acts are severable from one another, and the sections of each act are severable from one another. (See *infra*, discussion of severability clause of Act 270 of 1962, under subpoint (b).)

Appellants' constitutional attack on the Louisiana Subversive Activities and Communist Control Law (R.S. 14:358-374), the Louisiana Communist Propaganda Control Law (R.S. 14:390-390.8) and R.S. 14:385-388 assails every provision of every statute and is remarkably similar to the arguments made by the Communist Party of the United States in *Communist Party of the United States v. Subversive Activities Control Board*, 367 U. S. 1, 81 S. Ct. 1357, 1396-1397. In the latter case this Court answered the sweeping Constitutional attack as follows:

> "Many of these questions are prematurely raised in this litigation. Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated. United Public Workers v. Mitchell, 330 U. S. 75, 67 S. Ct. 556, 91 L.Ed. 754; International Longshoremen's & Warehousemen's Union v. Boyd, 347 U. S. 222, 74 S. Ct. 447, 98 L.Ed. 650. Even where some of the provisions of a comprehensive legislative enactment are ripe for adjudication, portions of the enactment not immediately involved are not thereby thrown open for a judicial determination of constitutionality. 'Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypo-

thetical case. . . . In part, this principle is based upon the realization that, by the very nature of the judicial process, courts can most wisely determine issues precisely defined by the confining circumstances of particular situations. . . . These considerations, crucial as they are to this Court's power and obligation in constitutional cases, require that we delimit at the outset the issues which are properly before us in the present litigation." . . .

See also *Poe v. Ullman*, 367 U. S. 497, 81 S. Ct. 1752, 1756, 1757, wherein the Court stated:

" . . . federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action. . . . 'This Court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here' . . . 'The party who invokes the power (to annul legislation on grounds of its unconstitutionality) must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, . . . 'The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts; and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true.' "

See also *United States v. Raines*, 362 U. S. 17, 20-21, 80 S. Ct. 519, 522 (1960); *United States v. Nat'l Dairy Products Corp.*, 372 U. S. 29, 36, 83 S. Ct. 594, 599 (1963).

When the issues before this Court in the present litigation are limited in the light of the October 25, 1963, discharge of appellants from arrest by the state Court, the January, 1964, indictments against appellants for violating R.S. 14: 360 and 364 (4) (6) and (7), and the granting by the state Court on June 12, 1964, of the motion to suppress the evidence seized on October 4, 1963, only Sections 359, 360, 363, 364 (4), (6), and (7) and 365 of Title 14 are immediately involved and are before this Court.

With the remainder of the statutes attacked by appellants, this Court is not concerned, as there exists no threatened prosecution by law enforcement officials of appellants under any of the remaining legislation. See *Poe v. Ullman, supra.*

For example, there exists no threat under the Louisiana Subversive Activities and Communist Control Law to deprive appellants of voting privileges, public employment, a place on the ballot, or corporate privileges. Nor has any demand been made upon appellants to furnish the affidavits provided for under R.S. 14:385-388; nor does any threat exist by any state law enforcement official to prosecute them under R.S. 385-388 or the Communist Propaganda Control Law. (R.S. 14:390 *et seq.*) Any threat to prosecute appellants under the Communist Propaganda Control Law was laid to rest on October 25, 1963, when the state Court discharged appellants Dombrowski, Smith, and

Waltzer from arrest for violation of R.S. 14:390 *et seq.* for lack of probable cause. See Stenographic Transcript of Testimony and Notes of Evidence Taken on the Preliminary Examination, Proceedings No. 181-975 of the Criminal District Court for the Parish of Orleans, State of Louisiana, Section "E", pp. 23, 25, 26, 32-33, 38. Since appellants' discharge, no state law enforcement official has threatened them with prosecution under R.S. 14: 390 *et seq.* Judge O'Hara's charge to the Orleans Parish Grand Jury to determine whether the Subversive Activities and Communist Control Act had been violated was under the authority of a specific provision of the latter act (R.S. 14: 368) and did not concern any violations of the Communist Propaganda Control Act (R.S. 14: 390 *et seq.)* The January, 1964, indictments of appellants by the grand jury were for the violation of R.S. 14: 360 and 364 (4), (6), and (7) and had nothing whatever to do with R.S. 14: 390 *et seq.*

Therefore, the only threat of prosecution existing against appellants is under Section 364 (4), (6), and (7) of the Subversive Activities and Communist Control Act. As Judge Wisdom stated in his dissenting opinion in this case (R. p. 92) "the constitutional attack affects many more sections of the law than those sections for violation of which the plaintiffs have been threatened with prosecution."

Yet it appears to be appellants' contention that although they are not threatened by any law enforcement officials with prosecutions or sanctions under the remainder of the attacked legislation, the fact that they are advocates of integration entitles them to attack the entire "statutory scheme" (to borrow their phraseology) as unconstitutionally vague because its legislative history

shows its purpose to be the preservation of segregation in Louisiana.

Appellants arrive at this conclusion despite the fact that they state earlier in their brief (p. 18) that "the Washington and Louisiana Statutes were obviously the product of the same draftsmen," and despite that fact that Judge Wisdom states in his dissent (R. p. 100): "Following the passage of the federal Internal Security Act, several states enacted so-called 'Little McCarran Acts' principally among them, Alabama, Louisiana, Michigan and Texas." Surely the appellants would not accuse the draftsmen of the Washington statute or the federal Internal Security Act of having as their purpose the preservation of segregation. See also *Uphaus v. Wyman*, 360 U. S. 72, 79 S. Ct. 1040, 1045; *Yates v. United States*, 354 U. S. 298, 77 S. Ct. 1064, 1071-1072, and *Baggett v. Bullitt*, 84 S. Ct. 1316, 1328-1329, for other state statutes of the same type.

In setting forth their version of the **"legislative history"** of the Louisiana Statutes attacked herein, appellants' brief (pp. 22-24) contains glaring inaccuracies.

(b) **Legislative History.**

The first Louisiana Communist Control Law was enacted in 1952, not 1954, as appellants state.

Act 506 of 1952, designated as the "Louisiana Communist Control Law," required Communists and members of Communist Front organizations, as listed by the United States Department of Justice, to register with the State Department of Public Safety, provided that Communists' names were not to appear on the ballot and that Com-

munists were not to hold non-elective jobs; and provided that the State Attorney General, the District Attorney, the State Department of Public Safety and all law enforcement officers were to enforce this law.

Act 623 of 1954, designated as the "Louisiana Subversive Activities Act," made it a crime to commit or advocate acts intended to overthrow the government by violence or other unlawful means.

This legislation was adopted in reliance on this Court's approval in 1951 of a Maryland statute of the same type in *Gerende v. Board of Supervisors*, 341 U. S. 56, 71 S. Ct. 565, and not because of any intent to use it to advance the cause of segregation.

R.S. 14:358-374, which constitutes the Louisiana Subversive Activities and Communist Control Law, one of the statutes attacked herein, was enacted as Act 270 of 1962, and was derived from Act 506 of 1952 (the Louisiana Communist Control Law) and Act 623 of 1954 (the Louisiana Subversive Activities Act). A comparison of the 1952 and 1954 Acts with Act 270 of 1962 (R.S. 14:358-374) shows that the 1962 Act is merely a consolidation of the 1952 and 1954 Acts.[1]

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[1]The following sections are derived from the 1952 Act:
Section 358.
Section 359 (1) (2) (3).
Section 360 A, B, C.
Section 361.
Section 362.
Section 363.
Section 364 (7).
Section 365.
Section 374.
The following sections are derived from the 1954 Act:
Section 359 (4) (5) (6) (7) (8).
Section 364 (1) (2) (3) (4) (5) (6).
Section 365.
Section 366 (1) (2) (3).

Although appellants would imply otherwise, the only rewriting of Act 270 of 1962 (R.S. 14:358-374) was to effect a consolidation of the 1952 and 1954 Statutes, and a change in language in order to comply with this Court's decisions in *Penn. v. Nelson*, 350 U. S. 497, 76 S. Ct. 477 (1956) and *Uphaus v. Wyman*, 360 U. S. 72, 79 S. Ct. 1040 (1959).

Act 270 of 1962 (Section 376), contains the following Severability Clause:

> "If for any reason any provision of this Act is declared by the Courts to be unconstitutional or invalid, the other separable provisions thereof shall not be thereby affected."

All of the sections and sub-sections of the 1962 Louisiana Subversive Activities and Communist Control Law are, in view of the above Severability Clause, and in view of their origin from two separate statutes (the 1952 and 1954 Acts), clearly separable from one another. This being so, the following language of this Court in *Communist Party of the United States v. Subversive Activities Control Board, supra*, 81 S. Ct. 1400-1401, is appropriate and dispositive of the issue that appellants are not entitled to attack the statute in its entirety:

> " . . . This Act, like the one involved there, has a section directing that if any of its provisions, or any of its applications, is held invalid, the remaining

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Section 367.
Section 368.
Section 369.
Section 370.
Section 371.
Section 372.
Section 373.
Section 374.

provisions and other possible applications shall not be affected. The authoritative legislative history clearly demonstrates that a major purpose of the enactment was to regulate Communist-action organizations by means of the public disclosure effected by registration, apart from the other regulatory provisions of the Act. Such is, of course, the very purpose of the severability clause. This being so, our consideration of any other provisions than those of § 7, requiring Communist-action organizations to register and file a registration statement, could in no way affect our decision in the present case. Were every portion of the Act purporting to regulate or prohibit the conduct of registered organizations (or organizations ordered to register) and of their members, as such, unconstitutional, we would still have to affirm the judgment below. Expatiation on the validity of those portions would remain mere pronouncements, addressed to future and hypothetical controversies. . . . But the Party argues that the threat, however, indefinite, of future application of these provisions to penalize individuals who are or become its members, affiliates or contributors, will effectively deter persons from associating with it or from aiding and supporting it. Thus, the provisions exercise a present effect upon the Party sufficiently prejudicial to justify its challenging them in this proceeding. In support of this contention, the Party cites cases in which we have held that litigants had 'standing' to attack a statute or regulation which operated to coerce other persons to withdraw from profitable relations or associations with the litigants. See, e. g., Joint Anti-

Fascist Refugee Committee v. McGrath, 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817; Pierce v. Society of Sisters, 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070; Buchanan v. Warley, 245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149; Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131; cf N.A.A.C.P. v. State of Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488; Bates v. City of Little Rock, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480. But these cases purported only to discuss what issues a litigant might raise, not when he might raise them. That a proper party is before the court is no answer to the objection that he is there prematurely. In none of the cases cited was the constitutional issue decided on a record which showed only potential deterrence of association with the litigant on the part of an unnamed and uncounted number of persons . . ."

Another glaring inaccuracy of appellants regarding the history of the attacked legislation concerns Concurrent Resolution No. 27 of 1954, which appellants state contains the following language: "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions and laws of our state." Nowhere in Resolution No. 27 do these words appear. For the convenience of the Court, House Concurrent Resolution No. 27 is quoted in full in Appendix A hereof.

According to the official journal of the House of Representatives of the State of Louisiana at the 17th regular session of 1954, p. 947, House Concurrent Resolution No. 27 was first read on May 27, 1954, was passed in its final form June 10, 1954, and called for a joint legislative

committee **to be appointed** to draft proposed legislation. At the time that Resolution No. 27 was first read in the House of Representatives, Act 623 of 1954 had already been introduced.

The 1954 Senate Calendar of the Louisiana Legislature, at page 21, shows that Act 623 of 1954 was introduced in the Senate on May 11, 1954, and was finally passed by the Senate on May 23, 1954. The 1954 Louisiana Senate Journal, at page 76, shows that on May 19, 1954, this Act was reported favorably by Robert A. Ainsworth[2], chairman of the Committee of Judiciary, and the Senate Journal, at page 1701, shows that the Act was passed unanimously.

Act 623 of 1954 had nothing to do with the Joint Legislative Committee created by House Concurrent Resolution No. 27. Although appellants state otherwise, the 1954 Louisiana Subversive Activities Act (Act 623 of 1954) could not have been a product of the Joint Legislative Committee which was created by House Concurrent Resolution No. 27, because the Joint Legislative Committee came into existence after the 1954 Act was already passed by the State Senate.

Another glaring misstatement by appellants is that the Louisiana Joint Legislative Committee on Un-American Activities is the principal State Agency responsible for the "operation, effect, administration, enforcement, and needed revision" of the statutes attacked herein. As authority for this misstatement, appellants' brief cites Louisiana House Concurrent Resolution No. 13 of the regular session of 1960, which created the Joint Legislative

[2]Now Federal District Judge, Eastern District of Louisiana.

Committee on Un-American Activities. For the Court's convenience, this Resolution is quoted in full in Appendix B hereof.

A comparison of Resolution No. 13 and the Statutes attacked herein show that they are completely independent of one another.

If Resolution No. 13 were judicially attacked and declared invalid, the statutes attacked herein would not be affected. Likewise a judicial declaration of the invalidity of the statutes attacked herein would not prevent the Louisiana Joint Legislative Committee on Un-American Activities from functioning under Resolution No. 13, including the holding of hearings and other appropriate activities.

Nowhere in Resolution No. 13 or in the statutes attacked herein is there any provision making the Louisiana Joint Legislative Committee on Un-American Activities responsible for the "operation, effect, administration, enforcement and needed revision" of the legislation attacked herein. What Resolution No. 13 authorized the Committee to do is to **investigate the facts** relating to subversive groups and, *inter alia*, to **investigate the facts** relating to the manner and extent to which subversive activities affect the "operation, effect, administration, enforcement and needed revision" of laws bearing upon subversive activities. The Louisiana Joint Legislative Committee on Un-American Activities is merely a legislative investigative body with no power whatever of law enforcement. The enforcement of R.S. 14:358-374 is, as provided in R.S. 14:363, vested in the State Attorney General, District or Parish Attorney, the State Depart-

ment of Public Safety and any other law enforcement officer of the State. Resolution No. 13 does not make the Joint Committee on Un-American Activities law enforcement officials but confers upon the committee only investigative powers. The enforcement of R.S. 14:385-388 and R.S. 14:390-390.8 is vested in the usual prosecuting officers of this State, that is, the District Attorney or the Attorney General. The Committee has nothing whatever to do with the enforcement of these statutes. Any press release or statement by the Committee calling for the enforcement of these statutes would not amount to a "threat of prosecution" inasmuch as the Committee has no powers of enforcement.

A further glaring misstatement in appellants' brief, making appellants master of the *non-sequitur*, is that House Concurrent Resolution No. 13 was part of a "segregation package" because it was passed on June 15, 1960, at the same time as laws which were designed to circumvent the impact of *Brown v. Board of Education* and subsequent opinions invoking the equal protection laws.

The 1960 Louisiana Senate Journal, at pages 751-753, reveals that Resolution No. 13 was sponsored by Senator Robert A. Ainsworth, and on page 887, that it was concurred in unanimously by the Senate on June 9, 1960.

The May 25, 1960, statement quoted on page 24 of appellants' brief, attributed to the Joint Legislative Un-American Activities Committee, has nothing to do with that Committee. The Joint Legislative Committee, established by House Concurrent Resolution No. 27 of 1954, and the Joint Un-American Activities Committee, established by House Concurrent Resolution No. 13 of 1960,

are two distinct and separate entities. Because the New Orleans Times-Picayune of May 25, 1960, reported that the Joint Legislative Committee of 1954 stated that the espousal of integration in the South is a primary goal of the Communist Party, appellants conclude that this statement must be attributed not only to the Joint Legislative Committee on Un-American Activities, a distinct entity, but also to the entire legislature of Louisiana. From the mere press release, without legal consequences, of one legislative committee, appellants conclude that the entire Louisiana Legislature viewed the entire area of Communist control as another instrument in its efforts to continue segregation.

In *Masters of Deceit* (Holt & Co. 1958), Chapter 18, entitled "Communism and Minorities", pages 243-252, J. Edgar Hoover discusses the use by the Communist Party of the movement for integration for the Party's own ends. A particularly significant paragraph is the following which appears on page 243:

> "In the case of the Negro minority the Comintern began in 1928 to lay down a specific Party line for the guidance of comrades in the United States. According to Comintern instructions, Negroes were to be considered as an 'oppressed race.' The Party was told to carry on a struggle 'for equal rights' but 'in the South . . . the main Communist slogan must be: The Right of Self-Determination of the Negroes in the Black Belt'."
>
> See also *Draper, The Roots of American Communism* (Viking Press 1957), p. 387.

Surely the appellants would not accuse Mr. Hoover or Mr. Draper of viewing the entire area of Communist

Control as another instrument in an effort to continue segregation.

Referring again to the 1960 Louisiana Senate Journal for June 15, 1960 (pages 882-965), we find that a vast range of legislation was considered by that body on June 15, 1960, the date on which House Concurrent Resolution No. 13 was signed. Immediately following the action taken on House Concurrent Resolution No. 13, one finds House Concurrent Resolution No. 32, which concerned a deep water industrial canal. Then follows House Concurrent Resolution No. 53 concerning an intra-coastal canal in New Orleans. On the same day there are reported appropriation acts, public assistance acts, Wild Life Acts, and a host of others. Can all or any of these laws, simply because they were passed by a legislature which also enacted a "Segregation Package" be subject to attack as having been designed as additional weapons in Louisiana's battle to retain segregation? If so, this would be extending the discredited doctrine of Guilt-by-Association to statutory construction. Such a conclusion would also effect a method of thought control. That is, those states in which the prevailing views of the majority of its citizens do not agree at any given time with the national view would be punished by the federal Court for the views of its citizens by a presumption that all of its laws passed at the time of disagreement were enacted to circumvent the national view.

It is respectfully submitted that this Court should repudiate appellants' Guilt-by-Association argument as, at best, a colossal *non-sequitur*, and at worst a doctrine dangerous to our fundamental liberty.

(c) *Baggett v. Bullitt* Distinguished; the Louisiana Subversive Activities and Communist Control Law Prohibits Acts or Advocacy of Violent Overthrow of Government and Active Membership in Organizations Which Engage in or Advocate Violent Overthrow of Government.

The decision of this Court in *Baggett v. Bullitt*, 84 S. Ct. 1316, is not dispositive of the questions here presented and does not dispose of the issue of the constitutionality on their face of the Louisiana statutes challenged herein. In *Baggett v. Bullitt* this Court held that a 1955 Washington Statute which required professors at the state university to take a loyalty oath that they were not subversive persons and not members of the Communist Party was void on its face because of vagueness. Academic freedom (which is not involved herein) was at stake, and this Court pointed out that the oath required a teacher to "swear that he is not a subversive person; that he is not one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter or to assist in overthrow or alteration of the Constitutional form of government by revolution, force or violence".

Because teachers were involved, this Court interpreted the word "teach" in its dictionary sense, rather than as the term of art, carrying a special meaning implying action, that it has been since *Gitlow v. New York*, 268 U. S. 652, 45 S. Ct. 625 (1925). See *Yates v. United States*, 354 U. S. 298, 77 S. Ct. 1064, 1077.

This Court further found that the Washington Subversive Activities Act of 1951, part of which was incor-

porated by reference in the 1955 oath requirement, declared that the Communist Party was a subversive organization and membership therein a subversive activity. From these premises the Court concluded that under the 1955 Washington Act, any person who aided the Communist Party or who taught or advised known members of the Communist Party, was a subversive person, because at some future time such teachings or advice which adds to the knowledge of the Party or its members, might aid the activities of the Communist Party. The Court also found that the 1955 Washington statute required an oath which incorporated, as a definition of a subversive person, one who advocated alteration by peaceful, lawful revolution, not necessarily as a result of force or violence. Based upon all of these premises this Court held that the 1955 Washington Statute which required a loyalty oath was unconstitutionally vague.

The 1951 Washington Subversive Activities Act was not declared unconstitutional by this Court in *Baggett v. Bullitt.* This Court was concerned only with the 1955 Act prescribing a loyalty oath for Washington professors.

Appellants' statement in their brief (page 18) that the Louisiana Legislature established the identical scheme as the Washington statute, which was struck down in *Baggett v. Bullitt,* is misleading. The Louisiana legislation does not provide that the Communist Party is a subversive organization. R.S. 14:358 defines the world communist **movement** or communist conspiracy. R.S. 14:359 (5) defines a subversive organization, and R.S. 14:359 (2) gives a separate and legally distinct definition of the Communist Party. Under these definitions the Communist Party is not necessarily a subversive organization, and mere mem-

bership in the Communist Party does not necessarily make one a subversive person. To be a subversive **person**, one must meet the definition set forth in R.S. 14:359 (8). While the phrase "by any means" appears in the definition of "subversive person", it does not appear in the definition of "subversive organization."

Like the federal Smith Act (18 U.S.C. 2385), the Louisiana Subversive Activities and Communist Control Law prohibits as "subversive" the engaging in, or assisting in, or advocating of **action** to overthrow government by force or violence, and the knowing, active membership in an organization engaged in such action. R.S. 14:364 (1) through (6). See *Gerende v. Board of Supervisors, supra; Dennis v. United States*, 341 U. S. 494, 71 S. Ct. 857; *Yates v. United States, supra*, 77 S. Ct. 1077; *Scales v. United States*, 367 U. S. 203, 81 S. Ct. 1469, 1482-1484. The Louisiana legislation does not go beyond overthrow by force, violence, or unlawful (as opposed to peaceful) revolution. The "advocacy" or "teaching" of the violent overthrow of government which it prohibits means the advocacy of action (not abstract thought) to accomplish the overthrow of government, by language reasonably calculated to incite persons to such as speedily as circumstances would permit. It reaches only present advocacy of action for violent overthrow. See *Yates v. United States, supra; Noto v. United States*, 367 U. S. 291, 81 S. Ct. 1517, 1521 (1961). The Louisiana statute is couched in "terms of art" which have been previously construed to mean violent overthrow of government, advocacy of action to accomplish violent overthrow, and active, knowing membership in an organization engaging in such action. *Gitlow v. New York, supra; Yates v. United States, supra*, at pp. 1072, 1077;

Dennis v. United States, supra; Scales v. United States, supra.

In order for the penal provision of R.S. 14:364 (4), (5), or (6) to apply, the State would have to prove, not merely that the subversive organization referred to therein was the Communist Party, but that it was an organization which engaged in, or advocated, or aided action intended to overthrow the constitutional form of government of the State of Louisiana by unlawful revolution, force, or violence,[3] as provided in R.S. 14:359(5). It was the declaration in the Washington statute that the Communist Party was a subversive organization, and that mere membership therein was subversive activity, which was an essential element in the decision in *Baggett v. Bullitt.*

Another distinction between the Louisiana legislation and the Washington statute is that in the Washington statute the definition of subversive organization extended to one advocating alteration "by revolution," which the Court interpreted as including any peaceful fundamental change. In R.S. 14:359 (5), the word "revolution" is modified by the word "unlawful". An unlawful revolution is not a peaceful revolution, but a violent or forceful revolution.

[3]Even if the committee's declaration (referred to on pp. 27 and 28 of appellants' brief) that the Southern Christian Leadership Conference and the Student Non-Violent Coordinating Committee were substantially under the control of the Communist Party had any legal effect, *which it does not*, such "substantial control by the Communist Party" by itself would not constitute a crime under R.S. 14:364, would not make the organizations "proscribed," and would not subject any adherents of the organizations to the penal provisions of the statute. As pointed out above, it is not a crime merely to be a Communist, or to be controlled by Communists. One must, in addition, be proved to engage in, or advocate, or aid action to overthrow the state government by force.

See *Gitlow v. New York, supra,* wherein the Court stated:

> "The statute . . . does not restrain the advocacy of changes in the form of government by constitutional and lawful means. **What it prohibits is language advocating, advising or teaching the overthrow of organized government by unlawful means. These words imply urging to action . . .**" (Emphasis supplied.) See also *Whitney v. California,* 274 U. S. 357, 47 S. Ct. 641 (1927).

The Louisiana legislation imposes no criminal penalties for "being a subversive person," although it defines that term in R.S. 14:359 (8).[4] R.S. 14:364 contains all of the acts which are prohibited as felonies under the Louisiana Subversive Activities and Communist Control Law. Sub-sections (1), (2), and (3) of Section 364 deal with acts to overthrow the Government of the State of Louisiana by unlawful revolution, force or violence and the advocating, aiding or teaching persons to commit such acts **under circumstances which would "constitute a clear and present danger to the security of the State."** See *Schenck v. United States,* 249 U. S. 47, 52; *Dennis v. United States, supra,* 71 S. Ct. at pp. 864, 870. Sub-sections (4), (5), and (6) of R.S. 14:365 prohibit the active participation and management or active membership in a subversive organization, knowing that the organization is a subversive organization. Sub-section (7) of R.S. 14:364 requires the registration of any person who is a Communist, or knowingly a member of a Communist Front organization. The terms "subversive", "communist", and "communist-front" have different meanings under the statute. R.S. 14:359, 364.

[4]The only sanction imposed on "subversive persons" is their ineligibility for public office or employment, which is not involved in the present litigation. R.S. 14:369-373.

Thus, membership in a Communist or Communist Front organization is not made a crime in Louisiana. A member of a Communist or Communist Front organization must register with the State Department of Public Safety (R.S. 14:360), and only his willful and knowing failure to register is a felony (R.S. 14:364 (7)), but mere membership as such in a Communist or Communist-front organization is no crime in Louisiana.

Appellants' assertion that the definitions of "subversive organization" and "communist front organization" are inextricably bound together ignores the fact that they are derived from two different statutes, the definition of "subversive organization" coming from Act 623 of 1954, and the definition of "communist front" coming from Act 506 of 1952. (See footnote 1, *supra.)*

In order for a person to commit a crime through membership under the Louisiana legislation, he must be an active member of a subversive organization, knowing that the organization is subversive, which means that he knows that it engages in, aids, or advocates action intended to violently overthrow the state government. But the mere membership in the Communist Party or a Communist Front organization would not make one a member of a subversive organization under the statute without proof that the Party or the Communist Front committed, aided, or advocated action intended to violently overthrow the Government of the State, and the member knew it and actively participated therein.

Appellants' strained construction, seeking to enlarge the application of the Louisiana Subversive Activities and Communist Control Act, so as to make it un-

constitutionally vague, is answered by the following language in *Scales v. United States*, *supra*, 81 S. Ct. at pp. 1483-1484, wherein a narrow construction of similar legislation (the Smith Act) was approved:

> "We find no substance in the further suggestion that petitioner could not be expected to anticipate a construction of the statute that included within its elements activity and specific intent, and hence that he was not duly warned of what the statute made criminal. It is, of course, clear that the lower courts' construction was narrower, not broader, than the one for which petitioner argues in defining the character of the forbidden conduct and that therefore, according to petitioner's own construction, his actions were forbidden by the statute. The contention must then be that petitioner had a right to rely on the statute's, as he construed it, being held unconstitutional. Assuming, *arguendo*, that petitioner's construction was not unreasonable, no more can be said than that—in light of the court's traditional avoidance of constructions of dubious constitutionality and in light of their role in construing the purpose of a statute—there were two ways one could reasonably anticipate this statute's being construed, and that petitioner had clear warning that his actions were in violation of both constructions. There is no additional constitutional requirement that petitioner should be entitled to rely upon the statute's being construed in such a way as possibly to render it unconstitutional. In sum, this argument of a "right" to a literal construction simply boils down to a claim that the view of the statute taken below did violence to the congressional pur-

pose. Of course a litigant is always prejudiced when a court errs, but whether or not the lower courts erred in their construction is an issue which can only be met on its merits, and not by reference to a 'right' to a particular interpretation".

See also *Dennis v. United States, supra*, 71 S. Ct. at p. 863, wherein the Court stated:

"One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that by its terms it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press. Although we do not agree that the language itself has that significance, we must bear in mind that it is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution. American Communications Ass'n v. Douds, 1950, 339 U. S. 382, 407, 70 S. Ct. 674, 688, 94 L. Ed. 925. We are not here confronted with cases similar to Thornhill v. State of Alabama, 1940, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; Herndon v. Lowry, 1937, 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1066; and DeJonge v. State of Oregon, 1937; 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278, **where a state court had given a meaning to a state statute which was inconsistent with the Federal Constitution.** This is a federal statute which we must interpret as well as judge. Herein lies the fallacy of reliance upon the manner in which this Court has treated judgments of state courts. **Where the stat-**

> **ute as construed by the state court transgressed the First Amendment, we could not but invalidate the judgments of conviction."** (Emphasis supplied.)

In the case at bar, there has been no construction by a state Court of the legislation attacked herein which transgresses the First Amendment. On the contrary, all state Court action in the case at bar has fully protected appellants' constitutional rights.

In *Yates v. United States, supra,* 77 S. Ct. at pp. 1072-1073, this Court stated:

> "We are thus left to determine for ourselves the meaning of this provision of the Smith Act, without any revealing guides as to the intent of Congress. In these circumstances we should follow the familiar rule that criminal statutes are to be strictly construed . . . "
>
> ". . . this statute should be read 'according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation'. United States v. Temple, 105 U. S. 97, 99, 26 L. Ed. 967".

On the other hand, "Judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of common law that crimes must be defined with appropriate definiteness". *Pierce v. United States,* 314 U. S. 306, 311, 62 S. Ct. 237, 239, "If a State Legislature is barred by the *Ex Post Facto* clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving the same result

by judicial construction". *Bouie v. City of Columbia*, 84 S. Ct. 1697, 1702. If a State Supreme Court is barred by due process from enlarging a statute by judicial construction, it must follow that the federal Courts are likewise barred.

In the case at bar, the construction of the Louisiana Subversive Activities and Communist Control Law urged upon this Court by appellants would be such an unlawful enlargement by judicial construction.

(d) Registration Provisions of the Louisiana Subversive Activities and Communist Control Law.

As pointed out above, the Louisiana Subversive Activities and Communist Control Law does not make it a crime to be a Communist or to belong to the Communist Party or a Communist Front organization. The statute requires that Communists, or persons who are knowingly members of a Communist Front organization shall register with the State Department of Public Safety. R.S. 14:360. Knowing and willful failure to register is a felony. R.S. 14:364 (7).

Appellants state that registration provision of R.S. 14:360 and the penal sanctions for failure to register violates the due process clause, citing *Aptheker v. Secretary of State*, 84 S. Ct. 1659. They further state that R.S. 14:360 contains the same vice as Section 6 of the Communist Control Act struck down by this Court in the *Aptheker* case. Appellants' claim is in error because Section 6, which was invalidated in the *Aptheker* case, applies whether or not the member actually knew that he was associated with a Communist-Action or Communist-Front organization. Section 6 also established an irrebuttable

presumption that persons who were members of Communist-Action or Communist-Front organizations would, if given passports, engage in activities harmful to the Nation's security. By contrast, R.S. 14:360 applies only to persons who are knowingly members of Communist Front organizations, and R.S. 14:364 (7) applies only to persons who knowingly and willfully fail to register. R.S. 14:359 (3) does not set up an irrebuttable presumption as does Section 6 of the Federal Control Act, but provides only that the designation, by the named Federal agencies, of an organization as Communist or Communist Front shall be presumptive evidence of the factual status of the organization. This is merely a rule of evidence; it is not an irrebuttable presumption; while it is reasonable to presume that any organization designated by the named federal agencies is potentially subversive, any person affected has a right to show that the organization in question was not in fact a Communist Front organization.

In the *Aptheker* case, *supra*, 84 S. Ct. at page 1667, the Court quoted with approval, the following views of the Department of Justice:

> "A world of difference exists from the standpoint of sound policy and Constitutional validity between making, as the bill would, membership in an organization designated by the Attorney General a felony and recognizing such membership . . . as merely one piece of evidence pointing to possible disloyalty".

The Court also pointed out in the *Aptheker* case, *supra*, 84 S. Ct. at page 1667, that the abridgement of liberty which was involved in the case (deprivation of passports) was more drastic and distinguishable from that involved in

American Communications Association v. Douds, 339 U. S. 382, 70 S. Ct. 674, wherein trade union access to the facilities of the National Labor Relations Board was conditioned upon submission of non-Communist affidavits by officers of the Union. This Court made the observation that although the requirements in the *Douds* case discouraged unions from choosing officers with communist affiliations, it does not affect their basic individual right to work and to union membership.

In the case at bar, the registration provisions do not involve, and are therefore distinguishable from, the drastic abridgement of liberty (prohibition of travel) which was involved in the *Aptheker* case, *supra*. The registration requirements do not prohibit anyone from traveling into and out of the State of Louisiana.

In the case at bar there is a rational connection between the presence in the state of members of the Communist Party or Communist Front organizations, and the danger thereby presented to the State's security which is to be averted by the registration provision of the Louisiana statute. In the *Aptheker* case, *supra*, the *nexus* between mere membership in the Communist Party and the danger to be averted by the deprivation of passports was lacking. As the Court pointed out in the *Aptheker* case, *supra*, 84 S. Ct. at page 1668:

> "The prohibition against travel is supported by a tenuous relationship between the bare fact of organizational membership and the activity Congress sought to proscribe".

The history of the Communist movement and the Legislative history of the Louisiana statute make it clear

that the Louisiana Legislature desired information about and a way of regulating potentially subversive persons within its borders. The registration requirements relate directly to the legislative area of interest, that is, the presence of potentially subversive persons within the State, born of the legislative determination that the Communist movement posed a serious threat to the security of the State of Louisiana. As this Court stated in *Uphaus v. Wyman, supra*, 79 S. Ct. at page 1046:

> "Certainly the investigatory power of the State need not be constricted until sufficient evidence of subversion is gathered to justify the institution of criminal proceedings".

The registration provisions were enacted in the interest of the State's self-preservation, "the ultimate value of any society". *Dennis v. U. S. supra*, 71 S. Ct. at page 867.

While compliance with the registration provisions will result in exposing the fact that certain persons are Communists or members of Communist Front organizations, this is the inescapable incident of the State's right to determine whether potentially subversive persons are present in the State. As the Court stated in *Uphaus v. Wyman, supra*, 79 S. Ct. at page 1046:

> ". . . the governmental interest in self-preservation is sufficently compelling to subordinate the interest in associational privacy."

Appellants' arguments concerning the registration provisions of the Louisiana legislation have been answered by this Court in *Communist Party of the United States v.*

Subversive Activities Control Board, supra, 81 S. Ct. at pp. 1414-1415 as follows:

> "Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support, see § 2(1), (6), (7), it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask . . .
>
> "It is argued that if Congress may constitutionally enact legislation requiring the Communist Party to register, to list its members, to file financial statements, and to identify its printing presses, Congress may impose similar requirements upon any group which pursues unpopular political objectives or which expresses an unpopular political ideology. Nothing which we decide here remotely carries such an implication. The Subversive Activities Control Act applies only to **foreign-dominated** organizations which work primarily to advance the objectives of a world movement controlled by the government of a **foreign** country. See §§ 3(3), 2(4). It applies only to organizations directed, dominated, or controlled by a **particular** foreign country, the leader of a movement which, Congress has found, is 'in its origins, its development and its present practice, * * * a world-wide revolutionary movement, whose purpose it is, by treachery, deceit, infiltration into other groups * * *,

espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization'. § 2(1). This is the full purported reach of the statute, and its fullest effect. There is no attempt here to impose stifling obligations upon the proponents of a particular political creed as such, or even to check the importation of particular political ideas from abroad for propagation here. The Act compels the registration of organized groups which have been made the instruments of a long-continued, systematic, disciplined activity directed by a foreign power and purposing to overthrow existing government in this country . . ."

Appellants' discussion of *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 71 S. Ct. 624 is in error. This case cannot be cited as authority for the proposition that the imposition of sanctions based upon *ex parte* designations of alleged subversive organizations violates due process. Three justices dissented in this case, and two justices were of the opinion that the case should have been decided on procedural rather than constitutional grounds.

Appellants' discussion of *Nastrand v. Balmer*, 335 P. (2d) 10, is also in error. In that case Section 3 of the Washington Subversive Activities Act provided that membership in a **subversive** organization shall be membership in any organization after it has been placed on the list of organizations designated by the U. S. Attorney General as being subversive pursuant to Executive Order No. 9835.

In declaring Section 3 of the 1951 Washington Subversive Activities Act invalid, the Washington State Court pointed out that Executive Order No. 9835 had been specifically revoked by Executive Order No. 10450, almost two years before Section 3 was enacted. The Court's holding was predicated upon the fact that Section 3 purported to adopt findings of the Attorney General promulgated pursuant to an Executive Order which had been revoked prior to the enactment of Section 3. The Court stated:

> "We cannot, under the guise of judicial interpretation, interject Executive Order No. 10450 (and the due process procedure provided for the listing of subversive organizations thereunder) into Section 3, contrary to the expressed terms thereof".

Appellants' argument that the registration requirements violate the privilege against self-incrimination, ignores the fact that the Louisiana statute does not make it a crime to be a Communist or to be a member of a Communist Front organization. The registration requirements do not use the term "subversive organization". No criminal penalties are attached to mere membership in Communist, Communist controlled, Communist infiltrated or Communist Front organizations, and registration as a member thereof would not incriminate a person as he would not be guilty of a crime.

(e) The Communist Propaganda Control Law.

Appellants have attacked the Louisiana Communist Propaganda Control Law as unconstitutionally vague. However, as there exists no threat of prosecution of appellants by law enforcement officials under this statute, its constitutionality is not an issue. See subpoint "a", *supra*.

However, in the event that this Court should consider the constitutionality of this Act, *Gitlow v. New York*, *supra*, disposes of the issue. A similar statute was involved in the *Gitlow* case, and the Court upheld its validity. Under the *Gitlow* decision the Louisiana Communist Propaganda Control Law is constitutional.

(f) The Statutes are Valid Exercise of the Right of Louisiana to Self Preservation.

The statutes are an exercise of the right of Louisiana to "self preservation" and a further attempt of her people to be fully protected and this is necessarily a constant task, as well as that of the United States.

Just as Louisiana Revised Statutes R. S. 14:113 Treason; 14:114 misprision of treason; 14:115 criminal anarchy; 52:201 sabotage are "unlimited and indiscriminate sweep" against the unlawful perpetrating of these crimes, so is the instant statute against its violators.

Of course those statutes must be administered affording all of the constitutional rights of those who find themselves at the criminal bar accused of transgression.

The mere fact of self declaration on the part of appellants that they champion the cause thousands of negro and white citizens who seek enforcement of constitutional rights does not establish unanimity and license to violate state law or the panoply of federal laws in this area.

Such a declaration here does not form a basis of jurisdiction for federal Courts in the administration of state law in state Court prosecutions, wherein all of ap-

pellants' rights can be, and similar persons' rights are asserted and maintained every day of the week.

Appellants confess with vigor, enthusiasm and zeal that they are extolling the cause of thousands of negro and white citizens of the state of Louisiana who seek enforcement of the Fourteenth and Fifteenth Amendments, in order to say that, there because no penal statute will lie against any of their activities. Appellants have been indicted by a grand jury of their peers, no less than serious accusation, that their activities are otherwise, and in violation of criminal law.

The statute in question is no less narrowly drawn, by way of example, than Louisiana's criminal laws on obscenity which have survived the test appellants urge here.

See *State v. Roufa*, 129 So. (2d) 743, 241 La. 474:

> "... That there may be marginal cases in which it is difficult to determine the side of the line on which a fact situation falls is no sufficent reason to hold the language too ambiguous to define a criminal offense."
>
> *Roth v. United States*, 354 U. S. 476, 77 S. Ct. 1304, 1312, 1 L. Ed. (2d) 1498.

In matters of Obscenity rights under the First Amendment both of freedom of speech and assembly are limited and such rights must give way to the preservation of social conduct, law, order and morality.

The legislative purpose of R.S. 14:358 through 14:388, R.S. 14:390 through 14:390.5 is clearly enunciated

in R.S. 14:358 and R.S. 14:390 in protection of the state which is none other than that same purpose sought by the United States in the enactment of the Smith Act, 1948, the Internal Security Act, 1950, the Communist Control Act, 1954, however, in protection of the Federal Government.

The same argument urged here against the state would be equally valid against the United States in having subsequently twice enacted legislation in the same area, having considered previous enactments less than ample in the Federal Government's and people's desire to maintain full "self preservation".

(g) The Statutes Do Not Violate Any Right Guaranteed by the Fourteenth Amendment.

The Louisiana Statutes are not violative of the Due Process Clause of the Fourteenth Amendment.

Appellants' argument in this attack is as equally without fact and substance and seeks recognition by conclusion not deserved. They say enactment and enforcement of the statutes are "merely another in many recent attempts to utilize the legislative power of certain of the Southern States to hamper, etc.,"[1] the civil rights movement. This is incorrect and stated boldly without substantiation.

The appellees are well aware of the authorities cited by appellants in support of this contention. They find all of these inapposite to the facts of this case.

In this argument appellees simply generalize in fiction re-urging, in general, ulterior motive, design and purpose.

The indictments of appellants as set out in Appendix "B" of their brief clearly show how this statute is being administered and enforced against them.

All these arguments have been disposed of elsewhere in this brief.

ARGUMENT.

Point II.

The Louisiana Anti-Subversive Laws Have Not Been Superseded by Federal Legislation.

"The Louisiana anti-subversive laws have been superseded by federal legislation". (Appellants' brief p. 54.)

On this issue both appellants and *amicus curiae* the American Civil Liberties Union fail to recognize the explicit and specific intent of *Uphaus v. Wyman*, 360 U. S. 72. They urge that *Uphaus* in no way altered *Pennsylvania v. Nelson*, 360 U. S. 497 (which is in itself a true statement) and that *Uphaus* "did no more than confirm the legality of state **investigations** of sedition and that it left Nelson undisturbed in so far as state **prosecutions are concerned**". (*Amicus* brief p. 13.) The *Uphaus* decision could not have been clearer on this issue! It said, in explaining and affirming *Nelson*, that,

> "The opinion [Nelson] made clear that a State could proceed with prosecutions for sedition against the State itself . . ." (360 U. S. 76.)

This point was emphasized in the *Uphaus* opinion as a prime factor therein. The Court in *Uphaus* stated clearly,

"the basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves." (360 U. S. 76.)

The State of Louisiana specifically designed the questioned statute to comply with the doctrines of the *Nelson* case and the *Uphaus* case, making a sincere effort to revise its laws to comply with the interpretations of the Constitution by this Court. So far as counsel has been able to determine, **not one** of the many cases cited by appellants or in the dissenting opinion in the district Court as authority under the *Nelson* doctrine arose out of a State statute specifically designed to comply with the decisions in *Nelson* and *Uphaus!* Appellants allege that the recent case of *Baggett v. Bullitt*, 84 Sup. Ct. 1316, 377 U. S. 360 "has in effect overruled *Uphaus*". (Appellants' brief p. 71.) This cannot be so, because the *Baggett* case dealt with a statute enacted in **1955** whereas the *Uphaus* case was decided in **1959**. The Louisiana Statute was enacted in **1962**. Had the Washington statute in *Baggett* been revised and reenacted to conform to the *Nelson* and *Uphaus* doctrine, as was the Louisiana statute, the issue in *Baggett* would have been totally different and likely resolved differently. During argument of the instant case, one member of the district Court commented from the bench that "whoever drafted the Louisiana statute must have had the *Uphaus* decision open before him", and this was in fact a correct observation.

The Louisiana statute is clearly **not** directed at the "same conduct" as the federal legislation, and even if it were, there is no valid reason why there could not be concurrent jurisdiction in this field as there is in so many other criminal matters. The Louisiana statute does make

reference to the "international Communist conspiracy", but the prohibited acts set forth in the statute and the definition of a "subversive organization" deal strictly with acts against the State of Louisiana. This is **not** a violation of *Nelson*, and is clearly within the *Uphaus* doctrine.

The district Court considered the precise point of whether *Uphaus* sanctioned "parallel state legislation" in protecting the State from sedition, and quoted at length from the *Uphaus* decision. (Transcript of record p. 71.) On the basis of this consideration the district Court correctly held,

> "thus it would appear that the state may validly proceed with prosecutions of sedition, treason, subversive activities and communist activities, carried on within the State and directed at the State alone," (transcript p. 72).

On this point the district Court cited 73 Harvard Law Review 163, 20 Louisiana Law Review 599, 28 George Washington Law Review 461, and 38 Texas Law Review 334, all interpreting both *Nelson* and *Uphaus* in this same manner.

There is no reason why the *Uphaus* case should be construed to be in conflict w[illegible] *Nelson*. It interprets and indeed affirms *Nelson!* Concurrent Federal—State jurisdiction exists in many types of crimes such as narcotics violations, bank robberies, kidnappings, possession of switch blade knives, and many other such matters. The American Bar Association in the report of its Committee on Communist tactics, Strategy and Objectives in 1958, urged most strongly that "careful consideration be given to congressional legislation or judicial construction which will . . . 3.

Restore to the States the right to enforce their own anti-subversive laws". In 1959, the *Uphaus* case substantially carried out just what the American Bar Association hoped for in this respect. Since then, in 1960, J. Edgar Hoover in his pamphlet "One Nation's Response to Communism", particularly encouraged the States to take part in anti-subversive activity. The Louisiana statute, in 1962, followed the decisions of this Court, on both *Nelson* and *Uphaus*, and is in no way preempted by federal legislation because it does not proscribe sedition against the United States. Appellant's argument that there is no area of inquiry or legislation open to the States in regard to Communism is directly in the teeth of both *Nelson* and *Uphaus*.

If this argument of appellants should prevail, what would be the result? J. Edgar Hoover testified two years ago before the House Appropriations Committee that there were **over 200** active Communist Front organizations "many of them national in scope" operating in the United States. To control these groups and do it effectively through federal action alone is impossible, unless we are to have a true "police state". Greater and more centralized federal control in the area of subversion is the quickest possible way to bring about the "gestapo" and "police state" controls which no one wants. Basic law enforcement, control of crime, protection of the citizens and their local institutions, original criminal jurisdiction if you will, must for the main be left to the **States**. If not, the Federal system established in the Constitution is ended, and we are indeed destined for a total change in our form of government.

Another reason to maintain the present doctrine of *Nelson-Uphaus* is that to void it would simply make it impossible for any state to protect itself against subversive

activities of any kind. Appellants and others are already shouting "You can't prosecute us because we are a civil rights group". If Nelson and Uphaus are overturned they could gain total immunity by frankly stating that they are a "Communist Group" and therefore immune from any state action against them! The federal government has a whole agency working solely on control of the narcotics traffic. Yet it cannot be controlled, even with the help of all the states, every one of which has statutes controlling narcotics. If this is so, what would be the result of federal enforcement alone attempting to control the much broader and infinitely more subtle field of subversive activities? Why should the states not participate in this for their own self-protection, particularly when the criteria of enforcement and limitations on enforcement are so carefully spelled out for them in Nelson and Uphaus?

Amicus Curiae American Civil Liberties Union alleges (Brief p. 15) that the "ghost [of *Uphaus*] haunts the civil rights movement". The doctrines of *Uphaus* and indeed, of *Nelson*, have nothing whatsoever to do with the legitimate civil rights movement. These cases and the Louisiana statute in question deal with **subversive organizations,** thoroughly and specifically defined in the statute. (Appellants' brief 3a, quoting the whole statute.) On one point the State of Louisiana and all legitimate civil rights organizations are agreed, that is that the leadership of Communists is not needed in the State of Louisiana, in the field of civil rights or in any other realm. Appellants in this case seek to hide behind the facade of "civil rights". Legislative inquiry in Louisiana by the Joint Legislative Committee On Un-American Activities has developed evidence which led to a legislative determination by the Committee to the effect that appellants are in fact operating

a Communist Front organization which is clearly within the specific provisions of the definition of a "Subversive Organization" set forth in the Louisiana statute. Congressional and legislative investigations of this organization, both before and after the action which precipitated this litigation, developed very well its subversive nature plus the fact that many of its activities and functions had absolutely nothing whatsoever to do with "civil rights" but were instead pure Communist functions, such as defending the twelve Communists convicted under the Smith Act, petitioning for clemency for well identified Communist individuals and open cooperation with several other well identified Communist Front organizations. Much of this activity has been developed and demonstrated by evidence introduced before the Legislative Committee in Louisiana and incorporated herein by reference and attached hereto in the form of reports Nos. 4 and 5 of the Joint Legislative Committee On Un-American Activities of the State of Louisiana, which are attached hereto as Appendix C and D. What this case amounts to primarily is an attempt by certain persons and groups previously publically identified as a part of the Communist Conspiracy, to destroy the police power of the States in the whole field of subversive activities by overthrowing the well-reasoned and constitutionally sound doctrines of both *Nelson* and *Uphaus*. The issue of "civil rights" and the claim to be a "civil rights" organization is a cover story behind which any Communist organization can always seek to hide. The racial issue, **on one side or the other,** is the one issue behind which every single subversive organization in the southern United States is hiding today. It is not necessary for any sincere civil rights worker or organization to operate outside the framework of law, in Louisiana or elsewhere, and many

are operating legally in Louisiana at this time. The *Nelson* and *Uphaus* cases clearly and reasonably fix the Federal —State relationship in the field of subversive activities. The tests applied and the reasoning in both cases is constitutionally sound and thoroughly workable. What appellants seek here is to overthrow the doctrine of **both** cases and set up a **new** doctrine that would literally destroy the effective police power of the states. In the chaos this would produce, Communists and all other varieties of subversive organizations would be able to operate quite freely throughout this country without effective restraint. If their public record of activities in the past is any guide, this is appellants' true goal, irrespective of their stated purpose.

Points III and IV.

Jurisdiction and Abstention.

This Court does not have jurisdiction and if maintained, should abstain from exercising any consideration of these matters.

The issues in this appeal relate to the jurisdiction and injunctive authority of the federal courts.

What this Court is called on to pass upon at this juncture is whether the complaints filed in the court below stated a cause of action on which relief could be granted by that court, and if so, whether the court below had within its discretionary authority the power to defer to the courts of the State of Louisiana.

Appellants address the major part of their argument to the proposition that the state statute under which

the appellants were indicted is unconstitutional, both on its face and as applied to the appellants.

Even if this Court should be convinced that the statute involved here is unconstitutional, this conviction does not give the Court jurisdiction to make this determination unless the court below had jurisdiction to grant the relief requested in the complaint, and unless the court below acted beyond its powers in deferring to the courts of the State. If the Court should decide that the court below acted contrary to law, still, if this Court is not to undertake piecemeal determination of the constitutional issues, it should, in the event it should determine that the court below acted beyond its discretionary authority in dismissing the action, remand the case for determination of the constitutional issues. Although the court below determined at one stage in its consideration of the complaints that the statute was not unconstitutional on its face, its decision was to dismiss the complaint for its failure to state a claim upon which relief could be granted (R. p. 63), on the ground that the injunctive relief requested could not be granted, and that the issue on constitutionality should be left for determination by the state courts in the course of the criminal proceeding, subject to appeal to this Court (R. pp. 72-74). Based on this decision, the court below refused to hear evidence as to whether the statute was unconstitutional as applied to the appellants.

A federal district court cannot by virtue of the Civil Rights Act grant an injunction to stay a criminal prosecution in a state court.

Title 28, Section 2283, of the United States Code, specifically provides that a federal court may not grant

an injunction to stay proceedings in a state court, except as expressly authorized by Act of Congress or when necessary in aid of its jurisdiction, or to protect or effectuate its judgments. The present case is an injunction action against the prosecution of appellants by appellees in the courts of Louisiana under a Louisiana statute.

Section 2283 and its predecessors have been among the most widely litigated federal statutes, due to the sensitive area of federal-state relationships in which they operate. This legislation originated in the Act of March 2, 1893, as an amendment to the statute establishing the federal courts, and provided that no writ of injunction would be granted by a federal court to stay proceedings in any state court. In 1874 a statutory exception was made with respect to bankruptcy proceedings. With only minor changes, the same provision was incorporated into the Judicial Code of 1911 as Section 265. However, in the writing of the Judicial Code of 1948, three exceptions were introduced into Section 2283: (1) express authorization by Act of Congress, (2) where necessary in aid of jurisdiction, and (3) to protect or effectuate judgments.

Certain decisions of this Court had engrafted additional exceptions. In *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 182, the Court indicated "that it was settled by repeated decisions and in actual practice that when the elements of federal and equity jurisdiction are present, the provision (Section 265) does not prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to

the Constitution of the United States." The Court held in *Essanay Film Co. v. Kane*, 258 U. S. 358, 361, that in "exceptional cases the letter (of Section 265) has been departed from while the spirit of the prohibition has been observed."

However, in *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, the Court held that the statute should be strictly construed, and indicated that the foundation of the *Wells Fargo* and *Essanay* decisions was very doubtful. The Court also by indirection cast doubt on two other decisions, *Ex parte Young*, 209 U. S. 123, and *Gunter v. Atlantic Coast Line*, 200 U. S. 273. In 1955, in *Amalgamated Clothing Workers v. Richman*, 348 U. S. 511, 514, the Court said:

> "We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See *Toucey v. New York Life Insurance Co.*, 314 U. S. 118. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. . . . Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

The Court referred to the Reviser's Notes in connection with Section 2283, which read as follows:

> "An exception as to Acts of Congress relating to bankruptcy was omitted, and the general exception substituted to cover all exceptions."

The Court also held that the fact that exclusive jurisdiction over the cause of action is given by Congress to the federal courts was immaterial.

Appellants argue that at the time the present action was filed, they had not been indicted, and therefore the bar of § 2283 does not apply. The record shows that arrest and search warrants were issued and executed. The arrest warrants were vacated, but no action taken with respect to the search warrants. Appellants learned that copies of the documents seized under the search warrants, which had not been vacated, had been subpoenaed by the Orleans Parish Grand Jury, which had been charged by the presiding judge to investigate appellants and their organization, and filed the present action to enjoin appellees from proceeding under the asserted unconstitutional statute.

Thus this is rather different from the situation in *Ex parte Young, supra*, where the Court did not in its opinion make any more than passing reference to the fact that no "proceedings" had been undertaken at the time of filing of the federal action, without further discussion. The rate order complained of had not even become effective. Here there was at the time the federal suit was filed an outstanding search warrant, an investigation by a grand jury charged by the presiding judge to investigate appellants, and documents subpoenaed for presentation to the grand jury.

The question is whether these actions constitute "proceedings" under Section 2283. In *Hill v. Martin*, 296

U. S. 393, 400, the Court held as to the term "proceedings" as used in Section 265, the immediate predecessor of Section 2283:

> "That term is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process . . . It applies alike to actions by the court and by its ministerial officers."

The Court cited *Hyattsville Building Association v. Gouic*, 44 App. D. C. 408, 413, where the Court of Appeals for the District of Columbia held that the term "proceedings" referred to "a prescribed course of action for enforcing a legal right and necessarily entails the steps by which judicial action is invoked."

In *Hale v. Henkel*, 201 U. S. 43, 66, this Court said as to grand jury proceedings:

> "While there may be some doubt whether the examination of witnesses before a grand jury is a suit or prosecution, we have no doubt that it is a 'proceeding' . . . The word 'proceeding' is not a technical one, and is aptly used by courts to designate an inquiry before a grand jury."

The basis for the grand jury was explained in *Cobbledick v. United States*, 309 U. S. 323, 327, in the following terms:

> "The Constitution itself makes the grand jury a part of the judicial process. It must initiate prosecutions for the court to which it is attached and to which, from time to time, it reports its findings."

See also *Society of Good Neighbors v. Groat*, 77 F. Supp. 695, 698 (D.C. Mich., 1948), and *State v. Rodrigues*, 219 La. 217, 52 So. (2d) 756, 758.

Appellants also argue that the Civil Rights Act, which vests jurisdiction in the federal courts to redress Constitutional deprivations, was intended to authorize injunctive relief against state court proceedings. This Court has not passed on the effect of this statute (42 U.S.C. 1983) on the prohibition of Section 2283, and the legislative history provides no indication in this respect. The recent decision of the Fourth Circuit in *Baines v. Danville*, decided August 10, 1964, holds that the conferring of federal jurisdiction to redress civil rights violations is not an exception to the prohibition on injunctions against state court proceedings. See also *Smith v. Lanney*, 241 F. (2d) 856, and *Goss v. Illinois*, 312 F. (2d) 257, decided by the Seventh Circuit, and *Sexton v. Barry*, 233 F. (2d) 220, decided by the Sixth Circuit.

Assuming the existence of jurisdiction to grant injunctive relief against the prosecution of appellants in the state courts, the record in this case does not establish the extraordinary circumstances required before equitable relief will be granted.

Along with the statutory ban on federal injunctive authority over state court proceedings, the federal courts have applied a strict rule of equitable abstention in all but the most extraordinary situations. This Court has held that when equitable interference with state action is sought in federal courts, judicial consideration of acts of importance primarily to the people of the state should as a matter of discretion be left by the federal courts to courts

of the legislating authority, unless exceptional circumstances command a different course. *Stainback v. Mo Hock Ke Lok Po*, 336 U. S. 363, 383.

The court below in the present case decided that under the circumstances of the case, it should not interfere with the state prosecution. Appellants ask this Court to override the discretionary power of the court below and substitute its judgment on the conditions existing at the time and in the judicial district where the court convened.

What are the exceptional circumstances asserted by appellants? It should be noted that there was no hearing on this issue, and at this stage of the proceedings the only inquiry is whether the complaint makes out a *prima facie* case in this respect, subject to proof in the event the Court finds in favor of appellants. The court below would then have the responsibility of making fact findings in this respect.

The complaint alleges that the threats of appellees to enforce the statute were for the sole purpose of deterring, intimidating, hindering, preventing and depriving appellants, their friends, members and supporters, who have been attempting to eliminate racial segregation peacefully through the exercise of their rights to freedom of speech, press, assembly and association, of their constitutional rights (R. pp. 4-5). The complaint of the intervening appellants also asserted that indictment of appellants is calculated to curtail the Civil Rights activities of appellants as effectively as could actual conviction, in that charges and indictments of officers and members of Civil Rights organizations for alleged communist or subversive activity deter many from participation in or contribution

to them, both by those who believe such charges to be true, and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; and the fund-raising ability of SCEF would be greatly hampered as would the number of active participants in its programs (R. p. 28). Also the intervening appellants asserted that their law practice, including their ability to handle Civil Rights cases, could be and has been seriously affected adversely as the result of criminal charges or indictment alleging communist or subversive activity, the complete falsity of such charges being of little consequence (R. p. 28).

These asserted consequences of the criminal proceedings against the appellants are of great importance, both to the livelihoods of the individual appellants and the work of SCEF. We as lawyers cannot help but sympathize particularly with the plight of a professional man indicted for commission of a crime. If the constitutionality of the statute under which appellants are indicted could be determined in a civil proceeding where the criminal penalties and atmosphere are not involved, this would certainly ameliorate the hardship to them. But what a precedent would be established! It would necessarily give rise to a race to the courthouses, state and federal, upon any word being received of grand jury investigations under a state statute.

We are all aware of the serious problems existing in the South in the Civil Rights area, but is the existence of this situation ameliorated by the exercise of federal jurisdiction to override state courts, in the absence of any assertion that justice will not be done in the courts of the

state? No such allegation is made herein, and in fact, the action of the judge of the Criminal Court for the Parish of Orleans in summarily vacating the arrest warrants, and of the Supreme Court of the State of Louisiana in declaring the predecessor statute to that involved in this appeal unconstitutional indicates to the contrary. *State v. Jenkins*, 236 La. 300, 107 So. (2d) 648.

Appellants rely largely on the recent cases under the Civil Rights Act as indicating a special situation requiring a jurisdictional precedent. In *Stefanelli v. Minard*, 342 U. S. 117, 121, this Court considered the effect of the Civil Rights Act on its previous position, and concluded:

> "Only last term we restated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to repeal the federal system.' *Collins v. Hardyman*, 341 U. S. 651, 71 S. Ct. 937, 940, 95 L. Ed. 1253. Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecutions is one of the devices we have sanctioned for preserving the balance."

This view of federal-state relations was followed as recently as the 1962 Term in *Cleary v. Bolger*, 371 U. S. 392, in state criminal prosecutions.

The fact that numerous members of a class are threatened with prosecution is not sufficient to establish extraordinary circumstances. *Douglas v. Jeanette*, 319 U. S. 157, 165. Nor is the claim of irreparable injury due to the inability to follow one's occupation sufficient. *Stainback v. Mo Hock Ke Lok Po, supra*. Only in the event it plainly appears that resort to state proceedings would

not afford adequate protection might extraordinary hardship be established, assuming Section 2283 is no bar. *Fenner v. Boykin*, 271 U. S. 240, 243. The claim of exceptional circumstances in the present case, other than the effect on appellants' activities, is the deterrent effect on the civil rights movement of possible prosecutions on the basis of the statute involved here. The existence of a criminal statute in any area of activity is bound to have an effect, and it is always possible that prosecutors may misuse their authority. There is, however, no indication of large scale prosecutions under this statute, and in such event the federal courts are always open. The prosecution of appellants has been withheld pending the outcome of this appeal, and it can in no event be a long period of time before the issue of the constitutionality of the statute is passed upon by the state courts, subject to review by this Court. Injunctions look to the future, and by the time this Court remanded the case to the court below for the hearing on the extreme hardship issue, such hearing held, and a decision reached, the criminal prosecution and appeal to the State Supreme Court might well be completed. The indictment is effected, and the hardship necessarily resulting in the publicity of that fact has been done. The necessity of submitting to a trial, onerous as it is, is not the basis for a claim of denial of due process. *Wolf v. Colorado*, 338 U. S. 25. Nor is the imminence of prosecution alone a ground for relief in equity. *Beal v. Missouri Pacific Railroad Co.*, 312 U. S. 45.

For the purpose of this appeal the only issue is whether the complaint has stated a cause of action on which relief can be granted. Thus, assuming this Court finds that the court below had authority to grant injunc-

tive relief despite Section 2283, and that the circumstances set forth in the complaint are so extraordinary as to require the court below to proceed to consider the constitutionality of the state statute, the only action this Court should take is to remand the case to the court below for a determination as to whether the extraordinary circumstances can be proven. Until there is a judicial determination of fact in this respect, and a finding that such circumstances do exist to establish the basis for federal jurisdiction, the court below, and this Court, cannot proceed to make a determination on the constitutional issues. *Beal v. Missouri Pacific Railroad Co., supra.* Extraordinary circumstances must be determined on a case-by-case basis. *Baggett v. Bullitt*, 377 U. S. 360, 375. That case, a class action by approximately sixty-four members of the faculty, staff, and student body, raised the jurisdictional issue only of whether a doubtful issue of state law existed requiring construction by a state court. No state criminal action existed, raising the jurisdictional issues involved in the present case.

It might be argued, as posed by Mr. Justice Holmes, that justice requires the cutting of red tape, and that this Court should rule on the constitutionality of the statute before it. *Douglas v. Jeannette, supra*, at p. 124. But, as he responded, a great deal more is at stake. The result, as the Court held in the *Douglas* decision, might well be to invite a flanking movement against the system of state courts by resort to the federal forum, unless exceptional circumstances justifying such action are found to exist. In the present case, the Court could only, in any event, consider a part of the constitutional issue, whether the statute is unconstitutional on its face, since no evidence has been

taken on its constitutionality as applied to appellants. Such piecemeal consideration does not accord with proper appellate procedure, or the intention of Congress. *Douglas v. Jeanette*, *supra*, footnote at p. 123.

This appellee would note in concluding that he is nowhere named in the allegations of conspiracy set forth in the complaint herein other than the mere statement that appellees as a group entered into a plan or conspiracy with other persons to deprive appellants of their constitutional rights (R. p. 3). Aside from the failure to state a cause of action against this appellee for conspiracy, it is suggested that the complaint is in the nature of an action against the State and its prosecutive machinery. Cf. *Monroe v. Pape*, 365 U. S. 167.

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed.

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CERTIFICATE.

Proof of Service:

I, John E. Jackson, Jr., Assistant Attorney General, State of Louisiana, one of the attorneys for Appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certifies that on the ..... day of November, 1964, I served copies of the foregoing brief in behalf of Appellees on the several Appellants as follows:

Arthur Kinoy,
William M. Kunstler,
Michael J. Kunstler,
511 Fifth Avenue,
New York, N. Y.

by mailing copies in duly addressed envelopes with airmail postage prepaid.

Milton E. Brener,
1304 National Bank of Commerce Bldg.,
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A. P. Tureaud,
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Leon Hubert,
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by mailing copies in duly addressed envelopes with first class postage prepaid.

All of the above counsel are appellants' respective attorneys of record.

John E. Jackson, Jr.;
Asst. Attorney General.

APPENDIX "A"

SENATE COMMITTEE AMENDMENT

Amendment proposed by Senate Committee on Education to House Concurrent Resolution No. 27 by Messrs. Gravolet and Lancaster.

Amend original resolution as follows:

Amendment No. 1—

Delete the first, second, and third paragraphs and substitute in lieu thereof the following:

Whereas the Legislature of Louisiana adopted House Concurrent Resolution No. 22, wherein the Legislature resolved itself to provide ways and means whereby our existing social order shall be preserved, and our institutions and ways of life established by many generations of Louisianians and embodied in our fundamental law shall be maintained; now, therefore,

Be it resolved by the Legislature of Louisiana, the Senate and the House of Representatives concurring, that a Legislative Committee be appointed to draft proposed legislation to carry out the purposes set forth in House Concurrent Resolution No. 22 and hereinabove enumerated which committee shall serve with the authority and powers provided by the constitution of Louisiana; and,

Further resolved that the said Legislative Committee shall be composed of five members of the Senate appointed by the President of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives; and,

Further resolved, that the said Legislative Committee shall have the right and authority to call for the pro-

duction of and to inspect the books and records, and to secure information and compile data, from any of the Institutions and Departments of State Government and parish school boards, which in their judgment may be relevant or helpful in the drafting of such proposed legislation; and the Committee is authorized to secure the services of statistical, clerical, and other assistance from any of the State Institutions or Departments and from Parish School Boards to compile data and to make reports deemed necessary by this Committee to assist in preparing said proposed legislation and submitting such data and reports to the Legislature at the appropriate time; and

On motion of Mr. Gravolet the amendment was concurred in.

House of Representatives
State of Louisiana
Baton Rouge

June 10, 1954

APPENDIX "B"

HOUSE CONCURRENT
RESOLUTION No. 13—

By Messrs. Pfister, Tessier and A. D. Brown:

A CONCURRENT RESOLUTION

Whereas, this state and this country face grave public danger from enemies both within and without our boundaries, and

Whereas, these subversive groups and persons under the color of protection afforded by the Bill of Rights of the United States Constitution seek to destroy us and the ideals for which we fought to preserve and subject us to the domination of foreign powers and ideologies, and

Whereas, Louisiana, as one of the laboratories of this great country, may study profitably this problem within its boundaries and enact remedial legislation if facts therefor are made available, and

Whereas, necessary and desirable legislation to meet this grave problem and to assist local enforcement officers to be effective must be based on a thorough and impartial investigation by a competent and active legislative committee.

Therefore, Be It Resolved by the House of Representatives of the Legislature of the State of Louisiana, the Senate concurring therein, that there is hereby created the Joint Legislative Committee on Un-American Activities which Committee shall consist of ten members, five to be appointed by the Speaker of the House of Representatives from the membership of the House and five to be appointed by the President of the Senate from the membership of the

Senate which committee shall study, investigate and analyze all facts relating directly or indirectly to the subject expressed in the recitals of this resolution; to the activities of groups and organizations which have as their objectives, or as part of their objectives, the overthrow of the State of Louisiana, or of the United States by force, violence or other unlawful means; to all organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon the government and people of the United States; to all persons who belong to or are affiliated with such groups or organizations; and to the manner and extent in which such activities affect the safety, welfare and security of this state in National Defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions in this state including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution.

Be It Further Resolved that the Committee shall have the authority to:

(a) Select a chairman and a vice chairman from its membership, and to employ and fix the compensation of a secretary and such clerical, investigative, expert and technical assistants as it may deem necessary.

(b) Contact and deal with such other agencies, public or private, as it may deem necessary for the rendition and affording of such services, facilities, studies and reports as will best enable the committee to carry out the purposes for which it is created, and to rent and maintain office and storage space and equipment for the conduct of its business and the maintenance of its files and records.

(c) Cooperate with and secure the cooperation of parish, city, city and parish, and other local law enforcement agencies in investigating any matter within the scope of this resolution,

(d) Cooperate with and meet with similar committees of other states and of the Federal Government, or representative thereof, outside of this state, and expenses necessarily incurred in connection therewith by any of the members or staff of the committee, thereunto duly authorized by the chairman, shall constitute a proper charge against the sums allocated to the committee,

(e) Do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution, and

(f) Adopt and from time to time amend such rules governing its procedure as may appear appropriate.

Be It Further Resolved that every department, commission, board, agency, officer and employee of the State Government of Louisiana and of any political subdivision, parish, city or public district of or in this state, shall furnish the committee and any subcommittee, upon request, any such information, records and documents as the Committee or subcommittee deems proper for the accomplishment of the purposes for which the committee is created.

Be It Further Resolved that the committee shall have the power and authority to hold hearings at any place in Louisiana, which meetings may be public or private, to subpoena witnesses, administer oaths, require the production of books and records and to do all other things necessary to accomplish the purposes of this resolution.

Be It Further Resolved that the committee shall have the power to punish for contempt and to provide for the prosecution of any individual who is guilty of refusal to testify, false swearing or perjury before the committee in accordance with the laws of this state.

Be It Further Resolved that the committee shall submit its findings and recommendations to the Legislature at each of its regular sessions and at such other times as the committee may deem necessary and desirable.

Be It Further Resolved that the members of the committee created herein shall receive the same per diem and travel allowance in the performance of their duties as is provided for members of the Legislature.

Be It Further Resolved that the per diem and travel allowance herein authorized and all other expenses incurred by the committee shall be paid out of funds available to the presiding officers of the two houses of the Louisiana Legislature for expenses of the Legislature and Interim Committees.

and ask that the Lieutenant Governor and President of the Senate affix his signature to the same, in open session and without delay.

Respectfully submitted,
W. CLEGG COLE,
Clerk of the House of Representatives

APPENDIX "C" and "D", reports 4 and 5 of the Joint Legislative Committee on Un-American Activities of the State of Louisiana are supplied under separate cover.